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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Plan for Periodic Review of Regulations

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of plan for periodic review of regulations; request for comments.

SUMMARY: The Regulatory Flexibility Act (RFA) requires that NOAA's Office of National Marine Sanctuaries (ONMS) periodically review existing regulations that have a significant economic impact on a substantial number of small entities, such as small businesses, small organizations, and small governmental jurisdictions. This plan describes how ONMS will perform this review and describes the regulations proposed for review in fiscal year 2022.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Comments may be submitted by:

- Electronic Submission: Submit all electronic public comments via the Federal eRulemaking Portal. Go to <http://www.regulations.gov>, and search for docket NOAA-NOS-2021-0047, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personally identifiable information (for example, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily submitted by the commenter will be publicly accessible. NOAA will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Meredith Walz, NOAA Office of National Marine Sanctuaries, 1305 East West Highway, Silver Spring, MD 20910, *meredith.walz@noaa.gov*, or 240-533-0686.

SUPPLEMENTARY INFORMATION:

Background

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that Federal agencies take into account how their regulations affect “small entities,” which the RFA defines to include small businesses, small governmental jurisdictions and small organizations. 5 U.S.C. 601. For regulations proposed after January 1, 1981, the agency must either prepare a Regulatory Flexibility Analysis or certify that the regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Section 610 of the RFA, 5 U.S.C. 610, requires Federal agencies to review existing regulations which have or will have a significant economic impact on a substantial number of small entities. It requires that ONMS publish a plan in the *Federal Register* explaining how it will review existing regulations that have a significant economic impact on a substantial number of small entities. Regulations that have a significant economic impact on a substantial number of small entities that became effective after January 1, 1981, must be

reviewed within 10 years of the publication date of the final rule. Section 610(c) requires that ONMS publish in the *Federal Register* a list of rules it will review during the succeeding 12 months. The list must describe, explain the need for, and provide the legal basis for the rules, as well as invite public comment on the rules.

In addition, section 605 of the RFA, 5 U.S.C. 605, provides that if, when a rule is proposed or finalized, the head of an agency certifies to the Small Business Administration's Chief Counsel for Advocacy that the rule would not have a significant economic impact on a substantial number of small entities, then initial and final regulatory flexibility analyses do not need to be prepared for the rule. The Small Business Administration's guidance on implementing the requirements of RFA section 610 indicates that agencies may exercise their discretion to determine if previously changed conditions may mean that a certified rule now does have a significant economic impact on a substantial number of small entities and, therefore, should be subject to a full section 610 review. If there is evidence that a previously certified rule is now having a significant economic impact on a substantial number of small entities, then the Small Business Administration recommends that the agency should conduct a section 610 review of the rule.

Criteria for Review of Existing Regulations

The purpose of a section 610 review is to determine whether existing rules should be left unchanged, or whether they should be revised or rescinded in order to minimize significant economic impacts on a substantial number of small entities, consistent with the objectives of other applicable statutes. RFA section 610(b) requires agencies to consider five factors when conducting this review:

- (1) Whether the rule is still needed;
- (2) What type of public complaints or comments were received concerning the rule;
- (3) How complex is the rule;

(4) How much the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with state and local governmental rules; and

(5) How long it has been since the rule has been evaluated or how much the technology, economic conditions, or other factors have changed in the area affected by the rule.

For rules that were certified under RFA section 605, ONMS is not required to conduct a review under RFA section 610. However, ONMS may exercise its discretion to prepare an assessment to determine whether changed conditions may mean that the existing rules now do have a significant economic impact on a substantial number of small entities and should therefore be reviewed under RFA section 610.

Plan for Periodic Review of Rules

ONMS will conduct reviews in such a way as to ensure that all rules for which a final regulatory flexibility analysis was prepared are reviewed within 10 years of the year in which they were originally issued. During this same period, ONMS may exercise its discretion to also review rules certified under RFA section 605 as not having significant impacts. ONMS may evaluate whether changed conditions may mean that the existing rules now do have a significant economic impact on a substantial number of small entities and therefore should be reviewed under RFA section 610. ONMS intends that it will conduct section 610 reviews on applicable regulations on an annual basis. ONMS will make RFA Section 610 review reports available at the following website: <http://sanctuaries.noaa.gov/library/alldocs.html>.

ONMS Regulation Requiring Review for Fiscal Year 2022

ONMS has determined that one rulemaking finalized in fiscal year 2012 requires review under RFA section 610:

“Research Area Within Gray's Reef National Marine Sanctuary”. RIN 0648-AV88 (76 FR 63824; October 14, 2011). This final rule created an 8.27 square-mile research area

within the southern portion of Gray's Reef National Marine Sanctuary. NOAA created the research area pursuant to its authority under the National Marine Sanctuaries Act, 16 U.S.C. 1431 *et seq.*, in order to provide a zone specifically designed for conducting controlled scientific studies in the absence of certain human activities that could affect the results. NOAA prohibited fishing, diving, and stopping a vessel in the research area. NOAA prepared a final regulatory flexibility analysis for this rule when it was finalized.

ONMS invites comments on this rule, and will evaluate comments that would assist ONMS in conducting its RFA section 610 review. Unless we publish a document stating otherwise, ONMS will make the final report available at <http://sanctuaries.noaa.gov/library/alldocs.html>.

John Armor,

Director,

Office of National Marine Sanctuaries,

National Oceanic and Atmospheric Administration.

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